IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2573 OF 1998

Madhukar Daulatrao Patil,
age 40, Occ. Higher Secondary Teacher,
residing at Manoday, Opp.Petrol Pump,
Ganesh Nagar, At and Post Kalwan,
District Nasik-423 501. ...Petitioner.

Vs.

1. Dy. Director of Education,
   Nasik Division, Nasik.
2. Chairman, Kalwan Education Society's
   Radha Krishna Mahajan (RKM)
   Secondary and Higher Secondary
   School, Kalwan,
   Dist. Nasik-423 501.
3. State of Maharashtra through the
   Secretary to Govt. in the School
   Education Department, Mantralaya,
   Mumbai-400 032.
4. Balu Hari Sawant,
   Adharsha Colony, Near Market Yard,
   Ganesh Nagar, Kalwan, Dist.Nasik. ...Respondents.

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Mr. K.K. Malpathak for the Petition
Mrs. S.S. Bhende, AGP for Respondent No.1 and 3.
Mr.Mandar Limaye h/f. Mr. R.S. Apte for Respondent No.4.

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CORAM : S.RADHAKRISHNAN &
DR.D.Y.CHANDRACHUD, JJ.

November 23, 2004.

ORAL JUDGMENT (PER DR.D. Y. CHANDRACHUD, J):

I

The Petitioner was appointed on 16th August 1982 as a teacher for the Higher Secondary Classes at the School conducted by the Second Respondent. On the date of his appointment, the Petitioner had completed his Post-Graduation and the Bachelor's Degree in teaching. The Petitioner completed his M.A. in 1980 and B.Ed. in 1982. The Fourth Respondent was appointed as a teacher on 27th August 1981, prior to the Petitioner. However, on the date of his appointment, the Fourth Respondent held the M. Com. Degree which he completed in 1980. The Fourth Respondent completed a Diploma in Higher Education (DHE) in 1985. The Second Respondent issued a Seniority List in which the Petitioner was placed as the seniormost Higher Secondary Teacher above the Fourth Respondent.

2. The State Government issued a Government Resolution on 5th August 1997 clarifying that every Higher Secondary School or Junior College with eight or more divisions

would be entitled to one post of Assistant Headmaster or Assistant Principal. The seniormost teacher would be entitled to appointment on the basis of seniority and merit and for the purposes of seniority, the date of appointment in the Higher Secondary School or the Junior College would be the criterion. The State Government thereafter, issued another Government Resolution on 20th February 1998 stipulating that a separate Seniority List of Higher Secondary Teachers would be maintained for appointment to the post of Assistant Headmaster/Assistant Principal. The subsequent GR clarified that for determining seniority the relevant date would be the date on which the teacher acquired minimum qualifications for holding the post of Higher Secondary Teacher. On the basis of such a Seniority List, a teacher would be considered for promotion on the basis of seniority and merit to the post of Assistant Headmaster/Assistant Principal. On 10th March 1998, the State Government issued a corrigendum to the earlier Government Resolution dated 20th February 1998. By the corrigendum, it was clarified that while considering the seniority of a teacher for the post of Assistant

Headmaster/Assistant Principal, the date on which the teacher concerned joined service should be taken into consideration.

3. In response to an application submitted by the Petitioner on 6th March 1998, the Second Respondent appointed him as Assistant Headmaster on probation for a period of two years by a letter dated 14th March 1998. The Petitioner thereupon joined his duties as Assistant Headmaster.

4. The proposal of the Second Respondent for the appointment of the Petitioner was forwarded to the Deputy Director of Education. In response, by a letter dated 16th March 1998, the Deputy Director of Education returned the proposal holding that it was not in accordance with the Government Resolution dated 10th March 1998.

5. The Petitioner has, in these proceedings under Article 226 of the Constitution, challenged the Government Resolution

dated 10th March 1998 and has sought the issuance of a writ of Mandamus directing the First Respondent to accept the proposal forwarded to him for the appointment of the Petitioner as an Assistant Headmaster in the school.

II

6. The qualifications for teachers in Junior Colleges are to be found in Schedule “B” of the Maharashtra Employees of Private Schools Rules, 1981. Clause III thereof, requires a full-time teacher to have a Master's Degree of a statutory University in the Second Class in the respective subjects and a B.Ed., Diploma or Certificate in Teaching, approved by the Department. Rule 12 of the Rules requires every management to prepare and maintain a seniority list of the teaching staff including Head Master and Assistant Head Master and of non-teaching staff in the School in accordance with the guidelines laid down in Schedule “F”. Clause (2) of Schedule “F” lays down guidelines for the fixation of seniority of teachers in Secondary Schools, Junior Colleges of Education and Junior College Classes attached to secondary schools and

Senior Colleges. There are in all, eight categories from Category-A to Category-H. Note 4 specifies that the categories mentioned, represent a "*ladder of seniority*" and that the categories have been mentioned in "*descending order*". In other words, a teacher in Category-A will rank senior to Category-B and so on. Category-C is as follows :

> "Category C : Holders of -
>
> M.A./M.Sc./M.Com., B.T./B.Ed., or its equivalent; or
>
> B.A.B.T./B.Sc./B.Com., B.T./B.Ed., or its equivalent; or
>
> B.A./B.Sc./B.Com. Dip.T. (old two years course); or
>
> B.A./B.Sc./B.Com., S.T.C/Dip.Ed./Dip.T. (one year course) with 10 years post S.T.C. etc. service.
>
> B.A. or its equivalent plus Senior Hindi Shikshak Sanad with five years service; or Junior Hindi Shikshak with ten years service after obtaining both academic and training qualifications."

Category-F comprises of untrained Graduates or holders of equivalent qualification.

III

7. The Petitioner fell into Category-C on the date of his appointment since he held both the M.Com. And B.Ed. Degrees at that date. Contrariwise, the Fourth Respondent on the date of his appointment did not fall in Category-C since he did not hold any teaching qualification. Hence, though the Fourth Respondent was appointed as a teacher on 27th August 1981, prior to the Petitioner, who was appointed on 16th August 1982, the Petitioner who on the date of his appointment fell in Category-C of Schedule “F”, would rank higher in seniority than the Fourth Respondent. The Fourth Respondent acquired a teaching qualification only in 1985 and it is only thereafter that he could be regarded as falling in Category-C. Therefore, the proposal submitted by the Management to the First Respondent for the appointment of the Petitioner as Assistant Headmaster was in consonance with the Rules.

8. Counsel appearing on behalf of the Petitioner has drawn the attention of the Court to a Government Resolution dated 2nd January 2002 wherein it has been clarified with reference to a decision of the Nagpur Bench of this Court dated 9th October 2001 (Misc. Civil Application No.1059 of 2001 in Writ Petition No.916 of 1998) that appointments to the post of Assistant Headmaster/Assistant Principal should be made in accordance with the provisions of Rule 12 read with Schedule “F”, following the Seniority List laid down in consonance therewith. The Government Resolution dated 2nd January 2002 renders the position in conformity with the provisions of Rule 12 read with Schedule “F”. In that view of the matter, the challenge of the Petitioner to the Government Resolution dated 10th March 1998 has now been rendered academic.

9. The Petitioner is hence entitled to succeed. The communication of the First Respondent dated 16th March 1998 is quashed and set aside. The First Respondent is directed to accept the proposal proposing the name of the Petitioner as

Assistant Headmaster of the School in pursuance of the letter of appointment dated 14th March 1998. During the pendency of these proceedings, the services of the Petitioner in the post of Headmaster have been protected as a result of an interim order dated 11th June 1998 passed by the Division Bench. The services rendered by the Petitioner during the aforesaid period in the position of the Assistant Headmaster shall be computed for the purposes of the service and consequential benefits. The Petition is allowed in the these terms. There shall be no order as to costs.

(S.RADHAKRISHNAN, J.)

(DR.D.Y.CHANDRACHUD, J.)